

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CAROL BUSSEY, et al.,

Plaintiffs,

- against -

THE CITY OF NEW YORK, et al.,
Defendants.

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REPORT AND
RECOMMENDATION

15-CV-3790 (ARR) (JO)

James Orenstein, Magistrate Judge:

For the reasons set forth below, I respectfully recommend that the court grant the defendants' motion to dismiss plaintiff Carol Bussey's claims. *See* Fed. R. Civ. P. 25(a)(1).

Plaintiffs Carol Bussey and Andreana Cobbins filed a Complaint on June 29, 2015, alleging that the defendants violated their civil rights in connection with their arrest on December 3, 2014. Docket Entry ("DE") 1. On January 20, 2016, the plaintiffs' counsel reported that plaintiff Carol Bussey had died. DE 14 (minute entry). With the parties' consent, I entered a suggestion of death on the record and ordered plaintiff Bussey's successor or representative to file a motion for substitution no later than April 19, 2016. Order dated January 20, 2016; *see also* Fed. R. Civ. P. 25(a). That deadline has passed, and no motion for substitution has been filed; in the interim, however, the plaintiffs' counsel filed an amended complaint in the name of both plaintiffs. DE 17. The defendants moved to dismiss plaintiff Bussey's claims on May 18, 2016. DE 20.

When a party's death is suggested on the record, any party, or the decedent's representative, may ask the court to substitute a proper party for the decedent. "If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." Fed. R. Civ. P. 25(a)(1); *see also Kaplan v. Lehrer*, 173 F. App'x 934, 935-36 (2d Cir. 2006) (affirming the dismissal of the plaintiff's claims for failure to substitute a proper party after his death). A suggestion of death on the record may be filed by any person. *See Unicorn Tales, Inc. v.*

Banerjee, 138 F.3d 467, 469 (2d Cir. 1998) ("[T]he text of Rule 25(a)(1) contains no such restriction on who may file the statement."). Though a court may extend the time to file the motion for substitution for good cause pursuant to Rule 6(b), if no motion is made within the relevant time period, Rule 25 mandates that the claims "must be dismissed." *See Bassy v. Faith Sec. Serns.*, 2014 WL 2212016, at *1 (E.D.N.Y. Jan. 17, 2014); *Kernisant v. City of New York*, 225 F.R.D. 422, 426-27 (E.D.N.Y. 2005).

I entered a suggestion of death on the record on January 20, 2016. *See* Order dated January 20, 2016. The plaintiffs' counsel received notice of the order via e-mail from the court's electronic docketing system. Since then, no party has moved to substitute a proper party for the late plaintiff Bussey. Accordingly, the plain language of the applicable rule compels dismissal of plaintiff Bussey's claims.

For the reasons set forth above, I respectfully recommend that the court grant the defendants' motion to dismiss plaintiff Carol Bussey's claims. Any objections to this Report and Recommendation must be filed no later than June 9, 2016. Failure to file objections within this period designating the particular issues to be reviewed waives the right to appeal the district court's order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carville, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010).

SO ORDERED.

Dated: Brooklyn, New York
May 23, 2016

 /s/
JAMES ORENSTEIN
U.S. Magistrate Judge